

REMARKS/ARGUMENTS

Claims 1-7 and 12-31 remain in the application. Claims 8-11 were previously cancelled. Claim 31 is withdrawn. Claim 15 is amended to address an informality noted in the Office action. No new matter is added by this amendment.

A. Rejections under 35 U.S.C. 112.

Claim 15 was rejected under 35 U.S.C. 112. The amendment to claim 15 is believed to overcome the objection. It is respectfully requested that the rejection be withdrawn.

B. Rejections under 35 U.S.C. 103.

Claims 1-11 and 13-30 were rejected under 35 U.S.C. 103 based upon Carter. This rejection is respectfully traversed.

Independent claim 1 calls for, among other things, storage nodes having associated contexts including a political context, an economic context, a geographic context or a network topological context. Further, the data storage management processes serve a data storage request based at least in part upon the particular contexts associated with each of the storage nodes. These features of claim 1 are not shown or suggested in Carter, nor does the Office action even allege that these features are shown in Carter.

The Office action states that these limitations are "field of use limitations" that do not define a patentable distinction. Where is there any support for this assertion? The patent laws do not include any provisions that support the position taken in the Office action. It is respectfully requested that this argument either be supported by statutory or case law, or be withdrawn.

Further, these limitations in claim 1 are not intended in any way to define a field of use. These limitations set out specific types of metadata about storage nodes as well as specific manners in which the metadata is used. The invention of claim 1 contemplates a wide variety of fields of use. Hence, the pretext of the

argument stated in the Office action is false, and the rejection should be withdrawn.

Further still, the Office action recognizes that Carter does not show or suggest storage nodes having associated contexts including a political context, an economic context, a geographic context or a network topological context, but baldly states that these features would be obvious to add to Carter in order "to show the context included political context." This is simply a circular argument that uses applicants' own teaching as the motivation for the suggested modification. Hence, the rejection is based on an impermissible hindsight reconstruction of the claimed invention.

Claims 2-7 and 12-13 that depend from claim 1 are believed to be allowable for at least the same reasons as claim 1 as well as the specific limitations set out in the dependent claims.

Claim 14 calls for, among other things, a plurality of storage nodes each having one or more associated contexts including a political context, an economic context, a geographic context or a network topological context. The method of claim 14 further calls for selecting one or more of the plurality of storage nodes having an associated context satisfying the desired criteria. At least these features of claim 14 are not shown or suggested in the relied on reference.

The Office action acknowledges that Carter fails to disclose the context including political, economic, geographic or topological context. The Office action states that these limitations are "field of use limitations" that do not define a patentable distinction. Again, where is there any support in the patent laws or in case law for this assertion? It is respectfully requested that this argument either be supported by statutory or case law or be withdrawn.

Even if "field of use" were a proper legal basis for rejecting claims, these limitations in claim 14 do not define a field of use. These limitations set out

specific types of metadata about storage nodes as well as specific manners in which the metadata is used. Hence, the pretext of the argument stated in the Office action is false and the rejection should be withdrawn. Moreover, the Office action relies on Applicants' own teaching to provide motivation for the suggested changes to Carter that would be required to meet the limitations in claim 14. It is well settled that Applicants' own teaching cannot be used against them.

Claims 15-26 that depend from claim 14 are believed to be allowable for at least the same reasons as claim 14 as well as the specific limitations set out in the dependent claims.

Independent claim 27 calls for, among other things, maintaining a state information data structure including state information describing contexts that include a political context, an economic context, a geographic context or a network topological context as well as using the state information to allocate capacity within the network-accessible. As set out above with respect to claims 1 and 14, these features of claim 27 are not shown or fairly suggested by Carter. For at least these reasons claim 27 and claims 28-30 that depend from claim 27 are believed to be allowable over the relied on reference as well as the features presented in the dependent claims.

C. Conclusion.

The references that were cited but not relied upon are no more relevant than the references that were relied upon. In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance, which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

No fee is believed to be required by this response. Any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

January 13, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stuart T. Langley". The signature is written in a cursive, flowing style. It is positioned above a horizontal line that separates it from the printed contact information.

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